

The Award of the Administrative Law Judge sets out his findings of fact and conclusions of law and it is not necessary to repeat those herein.

The respondent introduced the opinion testimony of Douglas D. Frye, M.D., who had been designated by the respondent to treat the claimant's work-related injury. Dr. Frye did not consider the work-related injury to have permanently increased claimant's impairment of function from his preexisting degenerative disc disease. He believed claimant would benefit from general conditioning and work hardening, but that his functional impairment was no more than what would be expected for anyone of claimant's body size and age.

Claimant was referred by his attorney to Edward J. Prostic, M.D., who performed an examination on August 19, 1994. His testimony was introduced on behalf of the claimant. He found that claimant reported pain on the right side of his low back at waist level with intermittent radiation to his groin and anterior right thigh. Claimant described his pain as being worsened by substantial sitting, driving, bending or lifting. His physical examination findings were essentially within normal limits but with restriction of left bending and a finding of some tenderness along the right lower paraspinal muscles. X-rays revealed a moderately severe narrowing of L5-S1 disc space and other degenerative changes to the spine. He opined claimant has a ten percent (10%) permanent partial impairment of his body as a whole based from a lumbar spine injury that occurred in the course of claimant's employment with respondent.

A court-ordered examination was performed by P. Brent Koprivica, M.D., on August 5, 1994. His report of that same date includes mention of an April 27, 1993 MRI scan of the claimant's lumbosacral spine which is reported as demonstrating disc space narrowing at L5-S1 with degenerative osteophytes and minimal disc bulging, but with no evidence of disc herniation or nerve root impingement. There was also generalized desiccation of the intervertebral discs at L3-L4, L4-L5 and L5-S1. The claimant had some complaints of right groin and thigh pain associated with his back pain at the time of the examination, but felt he was fully capable of returning to his prior employment, although he will remain on a leave of absence therefrom while engaged in other duties. In Dr. Koprivica's opinion the physical examination was negative for symptom magnification and functional testing revealed that the validity criterion was fulfilled. Dr. Koprivica's opinion was that claimant was suffering from chronic low back pain with evidence of significant degenerative disc disease. He related the April 9, 1993 accident as having caused additional permanent injury and specifically found his current complaints not to be a natural consequence of his preexisting degenerative disc disease. He assigned a nine percent (9%) permanent impairment of function based upon the AMA Guides for the Evaluation of Permanent Impairment, Third Edition, (Revised). In his opinion claimant's condition and impairment would not prevent him from returning to work at United Parcel Service.

The Appeals Board agrees with the Administrative Law Judge and finds that the most credible medical opinion of claimant's functional impairment was that given by Dr. P. Brent Koprivica. That conclusion having been reached, the compensation to which claimant is entitled should be based upon the nine percent (9%) whole body functional impairment rating by Dr. Koprivica.

Having reviewed the entire record, the Appeals Board finds the findings and conclusions enumerated in the Award of the Administrative Law Judge to be accurate and appropriate and adopts same as its own findings as if specifically set forth herein.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge James R. Ward, dated July 25, 1995 should be, and hereby is, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Robert G. Herndon, Overland Park, KS
Frederick J. Greenbaum, Kansas City, KS
Anthony D. Clum, Topeka, KS
James R. Ward, Administrative Law Judge
Philip S. Harness, Director